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Held at the Palais des Nations, Geneva,
on Monday, 18 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.97/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Bulgaria (CAT/C/5/Add.28)

1. At the invitation of the Chairman, Mr. Djambazov and Mr. Dobrev (Bulgaria) took places at the Committee table.

2. Mr. DJAMBAZOV (Bulgaria) said that the new Constitution of the Republic of Bulgaria, which had entered into force on 13 July 1991, faithfully reflected the dynamic and radical changes under way in his country and provided new solutions to fundamental problems. Consequently, some corrections had to be made to the initial report submitted in September 1991 (CAT/C/5/Add.28).

3. The new Constitution embodied the principle of the separation of powers and Bulgaria now had a sound legislative basis for setting up a consolidated independent judiciary on an equal footing with the legislative and executive powers. The new Constitution provided that all acts and decrees of the executive, including acts of the Council of Ministers, were subject to judicial supervision to ensure that they were in conformity with the laws. The law-making activities of the executive, including those of the Council of Ministers, had been strongly curtailed; article 114 of the Constitution stated that the Council of Ministers was entitled to issue normative acts only pursuant to and in implementation of the laws.

4. The new Constitution guaranteed the separate functioning, independence and equality of the judiciary. The courts had been brought under the sole authority of the Supreme Judicial Council, which was competent to deal with all matters concerning the appointment, promotion, demotion, reassignment or dismissal and remuneration of judges, prosecutors and examining magistrates. It drafted the budget of the judiciary and submitted it to Parliament for approval. Under the new Constitution, the status of judges had changed significantly: they were now irremovable and enjoyed the same immunity as members of the National Assembly. Those changes had strengthened the position of judicial officials as representatives of genuinely independent institutions and were of great importance for the defence of the legitimate rights and interests of citizens.

5. The Constitution pledged loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance and its preamble gave pride of place to the rights, dignity and security of the individual. According to article 6, paragraph 1, all persons were born free and equal in dignity and rights. Article 6, paragraph 2, provided that they were equal before the law and that there could be no restrictions on their rights or privileges on the grounds of race or nationality. Under article 28, all citizens had the right to life and article 30, paragraph 1, embodied the principle of personal freedom and inviolability. Article 29, paragraph 1, stipulated that no person should be subjected to torture or cruel, inhuman or degrading treatment. Bulgaria's new Constitution thus codified the principles

of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international instruments, as well as the requirements of article 16, paragraph 1, of the Convention against Torture.

6. Bulgaria had no special legislation which regulated all aspects of protection against torture and other forms of cruel, inhuman or degrading treatment. However, the new Constitution provided for many ways of dealing with that problem, for which new penal and other laws would have to be adopted. Constitutional guarantees provided protection against the unlawful detention of citizens and restrictions on their liberties. Article 30, paragraph 2, thus stated that no person could be detained, subjected to inspection, search or any other infringement of his personal inviolability, except on the conditions and as established by a law. The competent State authorities could detain a citizen only in the urgent circumstances expressly stipulated by a law and they were required to notify immediately the competent judicial authorities, which had to rule on the lawfulness of detention within 24 hours (art. 30, para. 3).

7. Pre-trial detention could be authorized by the Prosecutor's Office, which was required to take cognizance of all the charges and details relevant to the detention and, if necessary to question the presumed offender directly. If the presumed offender was a minor, the prosecutor was required to question him directly in all cases (art. 36, para. 1, of the Act on the Prosecutor's Office). In that connection, he noted that paragraph 74 of the report was correct, but it did not provide a detailed picture of current legal practice. Extensions of the time-limit for preliminary investigations were still being allowed and questions were therefore being raised about the legal responsibility of the Prosecutor's Office in that regard.

8. Article 32, paragraph 2, of the Constitution guaranteed the inadmissibility of degrading treatment, stating that no person should be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except as otherwise provided by a law. Those constitutional provisions were of major importance, for the inhuman and degrading treatment of citizens by State organs had been common during the period of totalitarianism. The fact that there had been no recorded cases of torture in 1990 and 1991 was indicative of the country's peaceful transition from totalitarianism to democracy.

9. In the context of the inadmissibility of inhuman or degrading treatment, the Constitution promoted the principle of the rights of the defence; article 30, paragraph 4, provided that everyone was entitled to legal counsel from the time he was detained or charged. No one could be forced to plead guilty. Under article 31, paragraph 2, no defendant could be convicted solely by virtue of a confession and, according to article 31, paragraph 4, the rights of a defendant could not be restricted beyond what was necessary for the purposes of a fair trial.

10. There were still some discrepancies between the new Constitution and the penal legislation in force, which was also not in conformity with the Convention. For example, the main purpose of the Penal Code and the Code of Criminal Procedure was to determine criminal responsibility for the commission of physical offences, but they said nothing about mental and psychological

forms of violence and degrading treatment. Bulgaria had no specific legal provisions on the prohibition of and criminal responsibility for mental and psychological suffering. It therefore had to make a serious reassessment of penal and penitentiary practice as a whole.

11. With regard to paragraph 63 of the report, he noted that, under the Penal Code, not all forms of torture were considered to be crimes. Articles 142, 187, 407 and 419 of that Code did not cover all possible forms of cruel or degrading treatment, particularly of detainees and prisoners. However, the modernization of Bulgarian penal legislation was expected to take account of mental and psychological forms of violence and degrading treatment.

12. Since Bulgaria still did not have any special law covering the subject-matter of the Convention, article 5, paragraph 4, of the new Constitution was particularly relevant. It stated that international instruments which had been ratified by Bulgaria under the constitutionally established procedure were to be considered part of Bulgarian domestic legislation and would supersede any domestic legislation to the contrary. The provisions of the Convention were thus valid in his country.

13. In order to ensure the success of the democratic process, Bulgaria was making efforts to lay entirely new legal foundations. All the legislation which had been adopted during the period of totalitarianism could, however, not be changed overnight. It was therefore being used to the extent that it could serve the legislative needs of democracy. It was clear that legislative conflicts would arise and, in order to deal with them, the Constitution contained transitional provisions stipulating that the provisions of existing legislation were applicable unless they were contrary to the Constitution. Provisions which were in conflict with the Constitution were thus to be considered abrogated or void by virtue of the Constitution itself.

14. In accordance with the Constitution, the Constitutional Court had been established on 3 October 1991 to rule on the compatibility of the Constitution and international instruments concluded by the Republic of Bulgaria prior to their ratification by Parliament. Other very important structural laws, including the Act on the Supreme Judicial Council and the Local Self-Government and Local Administration Act, had also been adopted. The system of courts and tribunals was undergoing changes and the new Penal Code, Code of Criminal Procedure and Act on the Execution of Sentences were being drafted. There was also an urgent need for new legislation to replace the Juveniles' Antisocial Behaviour Act.

15. Referring specifically to the report, he said that a number of paragraphs had to be amended as a result of the far-reaching changes taking place in his country. The first sentence of paragraph 3 should be disregarded and chapter 2 of the new Constitution, on the fundamental rights and obligations of citizens, taken into account. In paragraph 23, it should be taken into consideration that new legislation concerning the Ministry of Internal Affairs had been adopted by Parliament in 1991 and that draft legislation on the police, the national administration for the defence of the Constitution and the national investigating administration was now before the Parliament. The text of paragraph 25 should be deleted, since the Constitutional Court was competent to decide whether legislation was contrary to the Constitution. Article 5,

paragraph 4, of the new Constitution should be taken into account in the context of paragraph 27. The first sentence of paragraph 30 should be deleted and it should be borne in mind that article 119 of the new Constitution stated that justice was to be administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, assize courts and district courts and that the judiciary had changed from a two-tier to a three-tier system. The functions of the Constitutional Court should be taken into account in paragraph 31. In paragraph 49, it should be noted that the second free and democratic elections had been held in Bulgaria on 13 October 1991 and that a new Government had been formed under the current Prime Minister, Mr. Filipe Dimitrov. Elections for the Presidency were to be held on 12 January 1992.

16. In conclusion, he noted that the late submission of the report had been the result of the major democratic changes taking place in his country. The new Government of Bulgaria was ready to continue to cooperate closely with the Committee in future.

17. Mr. KHITRIN (Country Rapporteur) commended the Bulgarian delegation on its report and oral introduction, which reflected some of the major reforms taking place in Bulgaria. On his own behalf and that of the Committee, he congratulated Mr. Mikhailov on his recent election to the Bulgarian Parliament and wished him every success in his contribution to efforts to strengthen the rule of law and human rights and to eliminate torture in the country.

18. He had noted with satisfaction that the Government of Bulgaria was considering the possibility of withdrawing its reservations to the Convention and that the Parliament had decided to include a provision prohibiting torture in the new Constitution. He was also pleased to see that steps were being taken to amend obsolete legislation.

19. Referring to paragraph 83 and 84 of the report relating to article 11 of the Convention, he welcomed Bulgaria's critical approach to existing legislation and noted that the intention was to adopt regulatory instruments taking account of the requirements of the Convention. He regretted, however, that legislative provisions directly concerned with the implementation of the Convention had not been quoted in the report and asked whether the concept of mental suffering was included in provisions defining torture. He would like to have a brief description of the current situation with regard to the practical implementation of the Convention. Could a Bulgarian court invoke the Convention in its decisions? If so, he would be interested to have details of relevant cases. In the absence of specific legislation relating to matters of concern to the Committee, he requested information on the legal basis for measures to protect the rights of the individual.

20. He wished to know what the 10 types of penalty referred to in paragraph 14 of the report were. What were the penalties prescribed for "officials of the system of justice" mentioned in paragraph 15? He requested the Bulgarian delegation to provide at least one relevant judgement by a court.

21. He asked whether the Ministry of the Interior or the Ministry of Health was responsible for the compulsory medical measures referred to in paragraph 22. What were the legal safeguards against political prisoners being placed, as in the past, in psychiatric hospitals?

22. Paragraph 27 of the report stated that ... "it is impossible, other than by virtue of the law, to declare any act a crime and to prescribe a penalty on the basis of another enactment, even in international convention or agreement". Could the provisions of the Convention be invoked in the decisions of a court?

23. In connection with paragraph 28, he requested the Bulgarian delegation to list the authorities empowered to investigate crimes. Were State security bodies investigating any cases and, if so, what kind? Were there plans to set up an investigatory committee and what would its functions be?

24. In paragraph 31, the Department of Public Prosecutions was described as planning and waging "the struggle against crimes and other offences", but, in his view, such a department should be concerned exclusively with establishing the facts, not with fighting crime.

25. With regard to paragraph 33, he was surprised that there were as many as 1,444 persons in police custody. He wondered whether a mistake had not been made in the figures.

26. Turning to article 2 of the Convention, he asked what "necessary administrative measures" were taken to ensure in practice that torture or any other form of cruel, inhuman or degrading treatment or punishment was not used, as stated in paragraph 55.

27. In connection with article 3 of the Convention, he understood that Bulgarian legislation did not prohibit handing over an offender to another Government. He requested clarification of the provisions relating to article 3, since he believed that the translation of paragraph 60 might not be correct.

28. With respect to article 4 of the Convention, he asked what were the offences for which a person might be tried under article 287 of the Penal Code.

29. Referring to paragraph 73 of the report, he said he assumed that the person referred to as an "examining magistrate" was in fact an official of the Prosecutor's Office and entitled to make arrests.

30. Concerning article 7 of the Convention, he did not agree with the statement in paragraph 76 of the report that an offence involving inhuman or degrading treatment did not always constitute "a serious crime of a general nature". Any such offence was very serious and was a violation of human rights.

31. With regard to article 10 of the Convention, he asked what work was being done to train medical personnel in the requirements of the Convention.

Moreover, he did not understand why no preliminary medical examination was required at the time of detention, since it was precisely then that abuses could occur. He would welcome clarification as to whether a medical examination was arranged at another stage.

32. Concerning article 11 of the Convention, he asked for details of Bulgarian regulations relating to interrogation rules, methods and practices and arrangements for the custody and treatment of arrested or imprisoned persons. Were the rules consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners and in what cases had special measures, including the use of truncheons, been applied? He wished to have statistics of cases of suicides in prison.

33. As to article 12 of the Convention, paragraph 85 of the report stated that "prompt and impartial investigations are made into cases resulting in death or serious physical disability". But what happened if, for instance, a warder beat a detainee two or three times a week? That would also constitute a crime. The penalties imposed in the two cases quoted in paragraph 86 of the report were very mild indeed: there should be greater protection against such illegal practices and it might be concluded that the Convention was not being adequately implemented if guilty parties were not properly punished for their acts. He asked how many police officers had been dismissed for acts of ill-treatment against detainees and prisoners.

34. Ms. CHANET (Alternate Country Rapporteur) thanked the delegation of Bulgaria for its report and oral introduction and congratulated Mr. Mikhailov on his election as a member of the Bulgarian Parliament.

35. She asked whether there had been any new developments concerning the Prosecutor's Office. She would also like clarification of the role of the examining magistrate, who, according to paragraph 73 of the report, seemed to work under the prosecutor's supervision.

36. Like Mr. Khitrin she wished to know more about the compulsory medical measures referred to in paragraph 22 of the report. Had the unfortunate practices of the past been abolished or did the new legislation still provide for such treatment? She was concerned at the reference to compulsory medical treatment for excessive consumption of tobacco, which seemed to be a breach of personal freedom. Was such treatment used for any other conditions apart from drug abuse and alcoholism?

37. She had some questions about the figures given in paragraph 33 and asked whether 1,444 persons were being held pending trial or in police custody and for how long.

38. Referring to paragraph 34, she asked what was meant by "antisocial" acts and whether the concept applied only to juveniles.

39. In connection with the last sentence of paragraph 46 bis, she wished to know what punishment had been meted out to officials, lawyers, judges and other persons who had taken bribes.

40. As to paragraph 52, which stated that the death penalty had been widely applied in Bulgaria, she asked whether it was the Government's intention to repeal the death penalty altogether following the moratorium on executions mentioned in paragraph 53.

41. Turning to the specific articles of the Convention, she noted that paragraph 12 of the report stated that Bulgaria had no special law directly and exclusively regulating all aspects of protection against torture and other cruel, inhuman or degrading treatment or punishment. However, she pointed out that, in accordance with articles 1 and 4 of the Convention, States parties had to ensure that all acts of torture were offences under criminal law. She believed that the Bulgarian delegation was aware of that requirement.

42. In connection with article 2 of the Convention, paragraph 59 of the report stated that: "Under article 16 of the Penal Code, the only type of act not liable to punishment is an act carried out in compliance with an unlawful administrative order, transmitted through the regular channels, provided it is not obvious to the person complying with the order that it involves a criminal act. Accordingly, an order from a superior or a public authority may not be invoked to justify torture". She was not sure whether article 16 of the Penal Code was clear enough to ensure compliance with the requirements of article 2 and firm enough to avoid any doubt about such an order in the mind of a subordinate anxious to respect discipline.

43. Concerning article 3 of the Convention, the report was very frank in recognizing, in paragraph 60, that articles 435 to 441 of the Code of Criminal Procedure did not explicitly prohibit the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture. Had there been any instances of extradition in such circumstances and was it considered necessary to provide an explicit prohibition in the new legislation?

44. With regard to universal jurisdiction, paragraph 69 stated that the Penal Code was applicable "in respect of other offences perpetrated by aliens abroad". Did "other offences" include torture? She also wished to know which "crimes of a general nature" and which "serious crime of a general nature" were referred to in paragraph 76.

45. With respect to article 8, it was unfortunate that, as stated in paragraph 80, "The offences referred to in article 4 of the Convention are not included in the agreements on judicial assistance, as the latter were signed before the entry into force of the Convention". Did the Bulgarian Government intend to revise its extradition treaties to include those offences?

46. Referring to article 10 of the Convention, she asked whether it was the Government's intention to organize special training for the personnel mentioned in paragraph 1 of that article. She also asked for further details about the new training programme now being drawn up and what categories of persons it would be intended for.

47. The requirements of article 11 seemed to be met and, in that connection, she referred to paragraphs 37, 39, 40 and 56, but she would welcome clarification as to whether the new legislation would provide for a preliminary medical examination for detainees.

48. In connection with paragraph 84, she asked for details of the proposed amendments to article 87 of Regulation No. 5 of 1982, which allowed the use of rubber truncheons.

49. Concerning article 12 of the Convention and paragraph 85 of the report, she asked whether the Bulgarian authorities intended to introduce a system of protection involving investigations whenever acts of torture came to light, regardless of their consequences.

50. In connection with article 13, she asked whether there had been any complaints by victims of torture. She had understood the Bulgarian representative to say that there had been none; but the Committee had received a report from Amnesty International stating that there had indeed been such complaints. Amnesty International had written to the Bulgarian Government in October 1991, asking for clarification of those cases and she would like to know whether the delegation was in a position to provide the necessary information.

51. Referring to article 14 of the Convention, she asked whether the compensation provided under Bulgarian legislation was purely financial or whether there was any psychological, medical or occupational rehabilitation.

52. In connection with article 15 of the Convention, the wording of paragraph 95 of the report suggested that the Bulgarian Government was aware of the gaps in the provisions of its Code of Criminal Procedure and she assumed that it intended to make the necessary changes.

53. Mr. PERLAS thanked the Bulgarian delegation for its report and oral introduction and requested an explanation of the medical measures of constraint mentioned in paragraph 36.

54. In connection with paragraph 84, he wished to know what changes were going to be made to the regulation allowing for the use of rubber truncheons by agencies of the Ministry of the Interior in isolated cases of insubordination or brutal violation of internal order.

55. He had not understood paragraph 95 and requested that it should be explained. What were the economic and public organizations referred to in paragraph 88 and why were they exempt from liability? He would also like the "crimes against peace and against mankind", mentioned in paragraph 64, to be identified. Did such crimes include torture?

56. He stressed that, in the legislative changes under way in Bulgaria, due attention must be paid to the need to change attitudes by means of appropriate educational measures.

57. Mr. SORENSEN said that it was difficult to prepare a report in rapidly changing circumstances such as those in Bulgaria. He shared Mr. Perlas' concern about the importance of educational measures and would be interested to have further details of any special training and information the Government of Bulgaria intended to organize. Such details might be included in an annex to Bulgaria's next report, which was due shortly. The United Nations could give Bulgaria any assistance it might require in that regard.

58. He drew attention to the vital importance of rehabilitation as a means of firmly establishing a sense of justice among public opinion and expressed the hope that whatever measures were adopted by Bulgaria would ensure the full rehabilitation of victims of torture and the punishment of those guilty of torture. He asked whether there were any institutions in Bulgaria that specialized in the rehabilitation of torture victims and informed the delegation that the Committee would be pleased to help Bulgaria set up such institutions if it wished to do so.

59. Mr. BURNS said that, from the point of view of human rights, Bulgaria's recent history could be divided into three periods: the period before 1989, the period between 1989 and 1991, which was covered by the report, and the period since 13 July 1991, during which there had been very dramatic changes aimed at securely establishing the independence of the judiciary and implementing far-reaching reforms.

60. He had noted that the President of Bulgaria had not signed any death sentences for two years, but he was not sure whether capital punishment had actually been abolished in law and he asked for clarification of that point. He had also been struck by the statement in paragraph 52 that, as a percentage of its population, Bulgaria had the highest number of executions in Europe. He asked what the population of Bulgaria was.

61. Unless he was mistaken, the new Bulgarian law on confessions stipulated that no one could be convicted only on the grounds of a confession obtained by coercion. He pointed out that article 15 of the Convention categorically prohibited invoking as evidence any statement made as a result of torture and that that provision could not be departed from. He would appreciate further information on that apparent shortcoming of Bulgarian legislation.

62. With regard to article 14, the report described some of the civil remedies available to the victims of torture and he asked the delegation to provide any available data relating to successful actions to obtain compensation, as well as data on the ethnic composition of torture victims and persons who had been sentenced to death in the past, as there had been allegations of violations of the rights of the Turkish minority in Bulgaria. He asked whether any of those allegations had been substantiated and, if so, whether disciplinary charges or proceedings had been brought against any State agents involved in such violations.

63. Mr. DIPANDA MOUELLE, referring to the medical measures of constraint mentioned in paragraph 36 of the report, asked how those measures were enforced by the courts and, in particular, whether enforcement was by means of a court order. Paragraph 40 stated that bodies responsible for the enforcement of sentences were required fully to assist magistrates during the enforcement

of sentences and he asked what those bodies were and whether they were different from judges. He was not sure about the meaning of the statement in paragraph 47 that the Supreme Court had ordered the courts to convict persons guilty of any breach of the law, regardless of their position and social status. That statement seemed to guarantee equality before the courts, but he questioned whether it should be the responsibility of the Supreme Court to make such an order and suggested that the lower courts themselves should apply the principle of equality without being ordered to do so.

64. He noted from paragraph 51 that provision for the death penalty was included as a temporary measure in the Bulgarian Penal Code and he asked when it was applied and what was meant by the words "foundation of the Republic" in connection with crimes that carried the death penalty. He also wished to know whether the camps at Belene, Lovech and Scravena had been closed down and whether they had been replaced by a hospital or any other similar institution.

65. Mr. GIL LAVEDRA said that he understood the problems involved in preparing a report containing a definitive analysis of the situation in Bulgaria. He was particularly interested by the machinery adopted under the new Constitution to guarantee the constitutionality of the laws. He noted from paragraph 25 that, under the Constitution, Parliament alone could decide whether a law contravened the Constitution and he asked whether the monitoring of constitutionality would be centralized and who would be entitled to invoke the unconstitutionality of law. He also asked for an outline of the structure of the future legal system in Bulgaria and he would be grateful for information on the body which would be responsible for the enforcement of sentences and for monitoring conditions of detention.

66. The CHAIRMAN said that he was aware of the importance of the major reorganization of the Bulgarian legal system and, in particular, of the roles of the public prosecutor and his office. He wished Bulgaria every success in that enormous undertaking and said he was confident that, in view of the record time in which Bulgaria had adopted its new Constitution, it would also be able to bring about the necessary legal reforms just as rapidly. His confidence was bolstered by the fact that Bulgaria would be able to count on the valuable assistance of Mr. Mikhailov, whom he congratulated on his election to the country's Parliament.

67. Turning to specific aspects of the report, he asked for clarification of the statement in paragraph 39 that constant and strict monitoring guaranteed that measures of constraint could not be employed against individuals who were parties to criminal proceedings except in the circumstances and under the terms laid down by the Code of Criminal Procedure. Who carried out such monitoring and how? Paragraph 41 did not make it clear whether prisons came under the responsibility of the public prosecutor and he asked whether that was in fact the case.

68. The Bulgarian delegation should also supplement the information provided in paragraphs 55 to 59 with details not only of judicial, but also of any administrative measures adopted to prevent torture. It was stated in paragraph 60 that the Code of Criminal Procedure did not explicitly prohibit the expulsion, return (refoulement) or extradition of a person to another State where there were substantial grounds for believing that he would be in

danger of being subjected to torture, but he thought that article 3 of the Convention was applied directly in Bulgaria. However if that was not the case, it would be necessary to amend the country's legislation. Although the definition of torture under Bulgarian law was also not in conformity with that of the Convention, he was confident that that defect would be remedied by the legal reforms that were under way.

69. Paragraph 79 did not make it clear how Bulgaria applied the provisions of article 8, paragraphs 2 and 3, of the Convention and, according to paragraph 81, the legal assistance afforded by Bulgaria to other States in connection with criminal proceedings brought in respect of acts of torture did not seem to be as extensive as required by article 9, but he trusted that the relevant provisions of domestic legislation would probably also be amended. The failure to provide education and information for the police regarding the prohibition against torture was a curious oversight which he hoped would be remedied. He requested an explanation of the part of paragraph 92 referring to cases where the State was not liable for compensation or where the compensation was reduced. He also asked whether there had been any cases in which action had been taken against persons responsible for acts of torture under the previous regime and whether any compensation had been paid to the victims. He looked forward to receiving further details of the process of legal reform in the next periodic report of Bulgaria.

The public meeting rose at 11.50 a.m.